

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

D'VAUGHN CORTEZ HILL,  
Petitioner,  
v.  
J. ROBERTSON,  
Respondent.

No. 2:20-cv-01998-TLN-DB

**ORDER**

Petitioner, a state prisoner, filed a petition for a writ of habeas corpus under 28 U.S.C. §2254. On September 29, 2022, the magistrate judge issued findings and recommendations in which she recommended the petition be denied. (ECF No. 14.) Petitioner was granted thirty days to file objections to the findings and recommendations. (*Id.*) On December 15, 2022, this Court adopted the findings and recommendations, denied Petitioner's petition, and entered judgment for respondent. (ECF Nos. 15, 16.) At that time, Petitioner had not filed objections or otherwise responded to the findings and recommendations.

In a document Petitioner appears to have placed in the prison mail on December 11, 2022,<sup>1</sup> and was received by the Court on December 15, 2022, Petitioner seeks an extension of time to file objections to the magistrate judge's findings and recommendations. (ECF No. 17.)

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<sup>1</sup> Petitioner did not provide a proof of service with his filing. He dated it December 11, 2022. (*See* ECF No. 17.)

1 While that document was received by the Court on December 15, 2022, it was not entered on the  
2 docket until December 16, 2022, so was not available to the Court prior to issuance of the final  
3 order.

4 The findings and recommendations directed the parties to file any objections “[w]ithin  
5 thirty days after being served with these findings and recommendations.” (ECF No. 14.) When a  
6 party is conventionally served by U.S. mail, as Petitioner was in this case, an additional three  
7 days are added. Fed. R. Civ. P. 6(d). Therefore, Petitioner’s objections were due no later than  
8 November 1, 2022.

9 Because he did not seek an extension of time before the expiration of the deadline,  
10 Petitioner must demonstrate “excusable neglect” to establish good cause for an extension of time  
11 to file objections. Fed. R. Civ. P. 6(b)(1)(B). In *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd.*  
12 *Partnership*, 507 U.S. 380 (1993), the Supreme Court provided factors to consider when  
13 determining whether neglecting to meet a court-ordered deadline was excusable. They are: (1)  
14 the danger of prejudice to the opposing party; (2) the length of the delay and its potential impact  
15 on the proceedings; (3) the reason for the delay, and (4) whether the movant acted in good faith.  
16 See *Pioneer*, 507 U.S. at 395; see also *In re Veritas Software Corp. Sec. Litig.*, 496 F.3d 962, 973  
17 (9th Cir. 2007) (citing *Pioneer*, 507 U.S. at 395).

18 The first factor weighs in favor of Petitioner. If Petitioner is permitted to file objections,  
19 Respondent’s counsel will expend the same resources they would have had Petitioner filed timely  
20 objections. The Court finds respondent will not suffer any undue burden or prejudice.

21 As to the second factor — the impact on these proceedings — the Court recognizes  
22 Petitioner will be prejudiced if he is unable to appeal the denial of his Petition for two reasons.  
23 First, the failure to file objections waives the right to challenge the magistrate judge’s factual  
24 findings. *Miranda v. Anchondo*, 684 F.3d 844, 848 (9th Cir. 2012) (citing *Lisenbee v. Henry*, 166  
25 F.3d 997, 998 n.2 (9th Cir.1999)).<sup>2</sup> Second, Petitioner likely has just one opportunity to

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26 <sup>2</sup> Failure to file objections does not, however, automatically waive the right to appeal the  
27 District Court’s conclusions of law. *Miranda v. Anchondo*, 684 F.3d at 848; see also *Robbins v.*  
28 *Carey*, 481 F.3d 1143, 1146–47 (9th Cir. 2007); *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir.  
1991).

1 challenge his conviction in the federal courts. The federal habeas rules impose significant hurdles  
2 to filing subsequent §2254 petitions. *See* 28 U.S.C. §2244. This Court finds the second factor  
3 weighs in favor of reopening the case to permit Petitioner to file objections.

4 The third *Pioneer* factor — the reasons for the delay — does not weigh in Petitioner’s  
5 favor. Petitioner argues he should be granted an extension of time because he asked an attorney  
6 representing him in a separate proceeding whether he would submit objections on Petitioner’s  
7 behalf. By the time he received a response from the attorney, the time for filing objections had  
8 lapsed. While this excuse may have justified Petitioner’s failure to file timely objections, it does  
9 not explain his failure to seek an extension of time until well over thirty days after the deadline  
10 for filing objections. When the November 1, 2022 deadline approached, and Petitioner had not  
11 received a response from the attorney, he could have submitted a motion at that time.

12 With respect to the fourth *Pioneer* factor — good faith — the Court recognizes that the  
13 pleadings of pro se litigants are held to “less stringent standards than formal pleadings drafted by  
14 lawyers.” *Haines v. Kerner*, 404 U.S. 519, 520 (1972). That said, pro se parties remain bound by  
15 the applicable procedural rules. *See Ghazali v. Moran*, 46 F.3d 52, 54 (9th Cir. 1995). This  
16 Court has no reason to think Petitioner acted in bad faith. However, it also cannot be said that  
17 petitioner acted in good faith when he neglected to file a timely motion for an extension of time.

18 After weighing the *Pioneer* factors, this Court finds the prejudice to Petitioner and his pro  
19 se status are sufficient reasons to permit him additional time to file objections. Petitioner is  
20 warned that he must file any objections within the thirty days provided. This Court will not grant  
21 any further requests for extensions of time.

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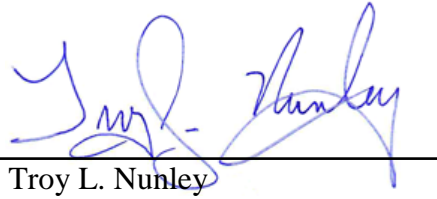
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Accordingly, IT IS HEREBY ORDERED as follows:

1. The Court's December 15, 2022 Order and Judgment (ECF Nos. 15, 16) are VACATED.
2. Petitioner's Motion for an Extension of Time to File Objections (ECF No. 17) is GRANTED. Within thirty days of the date of service of this Order, Petitioner may file objections to the magistrate judge's September 29, 2022 Findings and Recommendations. No further extensions of time will be provided.

**DATED: February 7, 2023**



Troy L. Nunley  
United States District Judge